In the High Court of Punjab and Haryana at Chandigarh

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Date of decision: 17.10. 2006

Ex.Rfn. Iqbal Singh ..Petitioner

Versus

Union of India and others ..Respondents

Coram: Hon'ble Mr.Justice M.M.Kumar
Hon'ble Mr.Justice M.M.S.Bedi

Present: Mr.Karan Garg,Advocate
for the petitioner.
Ms.Daya Chaudhary,Asstt.Solicitor General
for the respondents.

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M.M.Kumar,J.

The prayer made by the petitioner in the instant petition is for quashing order dated 29.9.2001(Annexure P-2) passed by the Controller of Defence Accounts(Pension) and also the order dated 21.10.2003 (Annexure P-5) issued by the Director General Personal Services,respondent No.2 rejecting the claim of the petitioner for disability pension. The petitioner has also prayed for issuance of direction to the respondents to grant him disability pension with effect from the date he was invalidated out of service with interest at the rate of 12 per annum.

Brief facts of the case are that the petitioner was enrolled in the Army as Rifleman on 15.10.1993. At the time of his entry into service, he was subjected to medical examination and was declared fit as no physical or mental disorder was detected. The petitioner started suffering from mental disturbance and epiliptic seizure, which led to the convening of medical Board. On 4.2.2000, he was medically examined and it was declared that he was suffering from Generalized Seizures BEE V-67. A copy of the order has been placed on record as Annexure (P-1). Accordingly, the petitioner was boarded out of service and

the certificate dated 4.2.2000 shows that the disability suffered by the petitioner was attributable to and aggravated by the Military Serviced. The petitioner applied for grant of disability pension, which has been rejected on 29.9.2001 by respondent No.4 on the ground that the disease was constitutional in nature and it was neither attributable not aggravated by Army service. The appeal filed by him was also rejected by respondent No.2 on 21.10.2003.

The respondents has filed written statement and in para No.1, the stand taken is that the petitioner does not fulfill the minimum conditions for grant of disability pension as per the requirement of Regulation 173 of Pension Regulation for the Army 1961. According to respondent, disability of the petitioner was assessed at 20 % as is evident from the perusal of para 4 of the reply. It has also been asserted that the petitioner has been paid numerous monetary benefits on his discharge, which are as under:-

(a) Invalid Gratuity	34,650/-
(b)Terminal Credit Balance	32,678/-
© AFPP Fund	78,902/-
(d)AGI Register Disability Elements:	37,500/-
(e)AGI Regular Maturity Benefits	9,403/-
(f)DCRG	2,9700/-

We have heard learned counsel for the parties and are of the view that the prayer made by the petitioner deserves to be accepted according to certificate issued on 4.2.2000(Annexure P-1). The disease of the petitioner which has caused the disability is attributable to and aggravated by Military service. The aforementioned opinion has been expressed by the medical experts. However, the requirement of 20 % has been candidly conceded in para 4 of the written statement which reads as under:-

> “It is further, submitted that before the petitioner was boarded out of from service, the medical board of the petitioner was held at 175 Military Hospital on 31 Aug,2000 on AFMSF-16 (Medical Board Proceedings/invaliding all ranks) and the disability of petitioner was assessed at 20 %. The board opined that the disability is neither

atributable nor aggravated by military service on AFMSF-16. Further, it is submitted that respondents did their efforts to cure the petitioner but couldn't do so. The contents of para 3 of preliminary submission may be taken and read as a part of under reply."

Even otherwise, we find that the matter is not Res-integra and this Court while interpreting Regulation 173 of the Pension Regulations 1961 also interpreted Rules,3, 4, 5, 8, 9, 14, 15 and 16 of the Entitlement Rules for Casuality Pensionary Awards,1982 in the case of Jaipal Versus Union of India 2005(2) P.L.R. 423 and Annexure III(Appendix II). In that case also, the question was whether Generalized Seizure is a disease, which is attributable to or aggravated by Military Service.The observations made in para No.9 and 10 squarely cover the case of the petitioner, which read as under:-

"A perusal of paragraph 173 of the Pension Regulations envisages two conditions which are necessary to be fulfilled for earning a disability pension:(a) disability pension may be granted to an individual who is invalidated out of service on account of a disease which is 'atributable to or aggravated by a military service' in a non-battle casuality; (bb) the disability is required to be assessed at 20 % or over. The question whether a disability is attributable to or aggravated by military service is required to be determined under the rules which are detailed in Appendix II. A conjoint reading of Rules 3, 4, 5, 8, 9, 14, 15 and 16 of the Entitlement Rules would make it evident that the petitioner has been invalidated out of service on account of his lower medical category than that which was recorded. It has to be presumed as per Rule 5 of the Entitlement Rules that the petitioner was in sound physical and medical condition when he entered service except any physical disability(ies) noted or recorded at the time of recruitment. In the event of his discharge subsequently from service on medical ground, any deterioration in his health has to be presumed to have taken place due to service. It is further clear

from Rule 9 of the Entitlement Rules that it is not the duty of the petitioner who claims the pension to prove the condition that the disability suffered by him is attributable to or aggravated by military service and the benefit of doubt has to be given to him. Rule 14 reiterates that a disease which had led to discharge of a claimant will ordinarily be deemed to be arisen in service in the absence of any note at the time of entrance in service. It is accepted by Rule 15 that on set and progress of some diseases are affected by environmental factors related to service conditions, dietic compulsions, exposure to noise, physical and mental stress and strain. In that regard the rule has guided us to make a reference to Annexure III (Appendix II) of the Entitlement Rules which classifies the diseases. Under sub-heading 'B' diseases affected by stress and strain have been listed and at item No.1 is Psychosis and Psychoneurosis.

10. The petitioner has been found to be suffering from Generalized Seizure. No such disease was admittedly found by the Recruitment Medical Board when the petitioner joined military service in 1981. On the repeated asking of the Court no record has been shown making such an entries by the Recruitment Medical Board in 1981. There is no list furnished to show that the disease 'Generalized Seizure 345' is relatable to any of the entry covered by sub-head 'J' which gives classification of diseases and include the diseases not normally affected by service. According to the dictionary meaning of expression 'Generalized Seizure" is sudden attack of apoplexy which is a syndrome manifesting the inability to feel and move and might be caused by blockage or rupture of brain artery. It is not easy to accept that such a disease cannot be caused during the stress and strain of military service. Moreover,. a very fascinating explanation has been tendered in reply to the assertion that the p[petitioner did not suffer from any

> disease when he entered service and was subjected to rigorous medical examinations by the Recruitment Medical Board. It is claimed in paragraphs 2 and 3 of the reply that this type of constitutional disease could not be detected at that time as there was no elaborate medical apparatus available in the recruiting office. Firstly, such an explanation cannot be considered as a legal defence to a claim for pension because in all cases where the record is silent then such a defence could be asserted and the legitimate claim can be defeated. In any case by virtue of Rule 9 of the Entitlement Rules, the onus to prove that the Generalized Seizure is a constitutional disease is on the respondents which they have miserably failed to prove. In somewhat similar circumstances this Court in the case of Ex. Sep. Ranjit Singh (supra) who was invalidated out of service on account of 'Schizophrenia and Generalized Seizure' has granted the benefit of disability pension. Similarly, in the case of Naresh Chand (supra) this Court granted the benefit of disability pension where the disability suffered was Generalized Seizure 345. Therefore,m the instant petition is liable to succeed."

When the facts of the present case are examined in the light of the observation made by this Court, it becomes evident that the discease Generalized Seizure is attributable to or aggravated by the Military Service. There is no explanation furnished by the respondent substantiating that the deceased is not attributable to or aggravated by Military Service and the onus was on the respondents.

For the reasons aforementioned, this petition succeeds, the impugned order dated 29.9.2001 (Annexure P-2) and 21.10.2003(Annexure P-5) issued by respondent No.4 and 2 respectively are hereby quashed. The petitioner is held entitled to disability pension in accordance with the rules as he fulfill both the conditions postulated on the Regulation 173 of the Pension Regulations. The respondents are directed to calculate the arrears of pension from the date the petitioner has been boarded out of service on 4.2.2000 and the

same be paid to him within a period of three months when a certified copy of order is supplied to them. The petitioner shall also be entitled to interest at the rate of 6 % P.A. from the date, arrears is being payable till the date of its payment. If the arrears are not paid within the period stipulated then the rate of interest shall be 10 % P.A.

(M.M.KUMAR)
JUDGE

October 17,2006
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(M.M.S.BEDI)
JUDGE